

THE STATE BAR OF CALIFORNIA

OPTIONS

FOR

DIVORCE

IN

CALIFORNIA

GET THE  
LEGAL  
FACTS  
OF LIFE

# OPTIONS for DIVORCE in California

This pamphlet describes the choices listed below in detail and explains how you can use the information if you have decided to divorce. At the end of the pamphlet, some frequently asked questions are answered.

## YOUR CHOICES

### 2 Self-Representation (Pro Per)

*Acting as your own attorney; what you need to know about the process.*

### 4 Mediation

*Reaching a negotiated resolution with the assistance of a mediator in a non-adversarial setting and without going to court.*

### 6 Attorney Representation

*Obtaining a divorce by having an attorney represent your interests in court.*

### 8 Limited Attorney Representation

*Using an attorney to assist you in a limited capacity with selected procedures.*

### 10 Questions and Answers

*Answers to your most frequently asked questions about obtaining a divorce in California.*

## INTRODUCTION

If you are considering divorce (which is officially called a **Dissolution of Marriage** in California), this brochure contains important information for you.

You may choose how to proceed with your divorce from several options, and this brochure will help you select among the alternatives. Whichever method you use to obtain a divorce, the divorce process alters your status—from being a married person with all the associated legal rights and responsibilities, to being a single person. The divorce path begins when one person decides that he or she no longer wishes to be married. In California, divorce is **no fault**, which means that if either spouse does not want to remain married, he or she may end the marriage without the consent of the other.

Every divorce case requires the filing of a family law **Summons** and a **Petition for Dissolution of Marriage** in the Superior Court of the county in which one of you lives. No divorce can be final until at least six months from the time the **Petition** is served.

The following issues arise in most divorces:

- Division of your property
- Division of your debt
- Payment of spousal and/or child support
- Creation of a parenting plan (child custody)

You can make decisions regarding these issues either before or after filing the **Petition for Dissolution of Marriage** with the court. If you reach agreement on all issues, it will not be necessary for you to appear before a judge. However, to finalize your divorce, the decisions you reach must be in writing and filed with the court. A divorce is final when a judge has signed a **Judgment of Dissolution of Marriage**, which becomes an order of the court.

## SELF-REPRESENTATION (PRO PER)

Many people process their own divorces without being formally represented by attorneys. The name for a person representing himself or herself is *in propria persona*. The shorthand name is *pro per*.

### ■ HOW IT WORKS

As a *pro per* you may use the services of a consulting attorney or a mediator, or you may handle your divorce entirely on your own. You may use sources, such as self-help books and the Internet to guide you, or seek the assistance of a **Family Law Facilitator** if one is available at your court. However, because your situation is unique and legal issues may be complex, family and friends can offer emotional support, but legal advice is best obtained from professional sources.

See “What resources are available to learn more about mediation and divorce?” in *FAQ*, pg. 11.

If you choose to represent yourself, you will be dealing directly with your spouse or with his/her attorney. If your spouse is represented by an attorney, it may be more difficult for you to represent yourself effectively.

### ■ REQUIREMENTS OF THE COURT

You, your spouse, or someone helping you must put any agreements you make in writing and file them with the court so they can be signed by a judicial officer. Then, the agreements will be enforceable as court orders.

In the event you have a court hearing, you must follow the rules of evidence and legal procedures that govern how and what you may present for the court’s review. Court filings must be in the appropriate format and must comply with certain specific requirements. Not every-

thing that is important to you is admissible as evidence, and you must present evidence in the correct fashion in order for it to be considered. For example, letters and other out-of-court statements—even if they are from your children or their teachers—are not generally considered proper evidence. Also, the court will only consider issues over which it has the right to rule. For example, if you want to discuss fault in the marriage or moral obligations that are not also legal obligations (such as college education for your children), you will probably not be able to do so in court. (You may, however, deal with such issues as part of a negotiated settlement with your spouse that becomes the basis for a court order.)

### ■ WHEN IS PRO PER APPROPRIATE?

The chief reason that people choose to represent themselves is to avoid the expense of hiring an attorney. Although many people can successfully handle their own divorces, especially when the issues are limited (such as when the marriage is short, there are no children, or there is minimal property or debts), be aware that you may accidentally make costly mistakes. For example, you may assume that pension benefits earned during the marriage belong only to the employee spouse, or that inheritance received during marriage must be divided between you and your spouse, which is not the case.

(See “Is there a simplified process for obtaining a divorce?” in *FAQ*, pg. 12.)

If you are considering representing yourself solely because you cannot afford an attorney and your spouse has greater financial resources, a judge may order your spouse to contribute financially so that you may hire an attorney.

## MEDIATION

If you choose mediation, both you and your spouse will meet together with a neutral third party who will help you resolve your custody, property, and support issues and obtain a legally binding **Judgment of Dissolution**. In addition to dealing with the legal and financial issues, an effective mediator is trained to help you and your spouse:

- Address underlying emotional issues
- Communicate more effectively
- Explore a wide range of settlement options
- Reach decisions that will work best for you and your family

### THE ROLE OF THE MEDIATOR

In mediation, you will make your own decisions in a private setting. Unlike a judicial officer, the mediator does not make decisions for you. Instead, he/she will help you explore alternatives so you can arrive at your own mutually agreed upon solutions, tailored to the specific needs and wishes of you and your family.

See “What questions should I ask when interviewing a mediator?” in *FAQ*, pg. 13.

### COSTS

Mediation is usually less expensive than adversarial representation. By voluntarily exchanging important financial information and jointly retaining experts when necessary (such as accountants, child custody specialists, appraisers, etc.), and by avoiding expensive trial preparation and court appearances, legal fees can be greatly reduced.

See “How do attorneys charge for their time?” in *FAQ*, pg. 12.

### OTHER BENEFITS

Because mediation leads to an out-of-court settlement, you are not dependent upon court calendars, which are frequently backlogged. Thus, the time it takes you to resolve the issues in your divorce may be significantly reduced. Communicating directly with each other with the help of a mediator trained to facilitate problem-solving and communication, may also help you co-parent and handle family issues successfully in the years after your divorce. Even couples who experience high conflict during this stressful time can often successfully mediate their divorce with the help of a skilled mediator. Because mediation is a confidential process, you may be more comfortable communicating in this private setting rather than in court. Most importantly, because you have reached agreements voluntarily through mediation, you and your spouse are more likely to abide by and honor these agreements.

### LEGAL ASSISTANCE

You may engage a **consulting attorney** to advise you during the process or to review the final agreement before you sign it. In certain situations, you may wish to have the attorney attend mediation sessions with you.

Mediation requires both parties to voluntarily disclose assets and debts, as well as income and expenses, so that an equitable agreement can be reached. If you have reason to believe that your spouse is hiding important information, you may need an attorney to do formal discovery, such as requesting documents or taking a deposition of your spouse or third parties who may have knowledge about assets or income before reaching agreement on these issues. Formal discovery is unusual in mediation, but can be used if you and your spouse agree.

## ■ DISADVANTAGES

If you feel intimidated by your spouse, it may be difficult for you to stand up for yourself in mediation. In some situations, where there is an imbalance of power, an experienced mediator or consulting attorney may be able to provide enough support to help you participate effectively and negotiate on your own behalf.

However, if you are the victim of domestic violence, you may need to have an attorney represent you and, in certain instances, obtain emergency protective orders from the court.

## ATTORNEY REPRESENTATION

You may have an attorney represent you as your advocate at all stages of your divorce. The law and legal procedure are fairly complicated and very specific. Attorneys are trained to understand the legal and procedural issues that allow them to handle your case effectively.

## ■ THE ROLE OF THE REPRESENTING ATTORNEY

The attorney you hire as your legal representative is trained to provide important services for you, including:

**Filling out and filing forms.** What you write or omit in the forms will affect your legal rights and responsibilities.

**Monitoring and moving the process forward.** An attorney is responsible for keeping track of your case. Divorces do not proceed automatically.

**Obtaining information.** An attorney can use legal means to help if your spouse refuses to provide information. Attorneys are trained to obtain important documents (**document production**) and to obtain answers to questions under

oath in written form (**interrogatories**) or verbal form (**depositions**). These statements may be necessary to effectively present your case.

**Negotiation and appearing in court.** Attorneys can negotiate effectively on your behalf. If negotiation is unsuccessful, the attorney will present your case to the court according to the laws of evidence, which govern what information may be presented and in what form.

## ■ THE COURT HEARING

The job of a judge or commissioner is to hear both sides and make a reasoned decision.

Hearing both sides does not mean that you will have a chance to take the witness stand. Many matters are decided only on written statements made under oath. While you are guaranteed the opportunity to have your case decided by a judicial officer, since the courts are busy, the time you have to present your case is generally limited.

## ■ COSTS

The cost of being represented by an attorney throughout your divorce may be significant. Most attorneys charge by the hour and include time spent for such activities as telephone calls, travel, and waiting around in court for your case to be called. Postponements, which routinely occur, add to the expense.

See “How do attorneys charge for their time?” in *FAQ*, pg. 12.

## LIMITED REPRESENTATION

An attorney may be hired to assist you at various stages of divorce proceedings. Not all attorneys will work on only portions of a case, but some will agree to act as collaborative attorneys or consulting attorneys (also called “coaches” or “providers of unbundled legal services”).

### ■ COLLABORATIVE ATTORNEY

The role of a collaborative attorney is to work with you, your spouse, and your spouse’s attorney towards the goal of reaching a settlement on all issues, exchanging necessary information, selecting common experts, and focusing on negotiating family issues in a cooperative, informal manner. Because collaborative attorneys will not represent you in court if this process fails to settle all your issues, you and your spouse must agree at the beginning of the process to retain new attorneys to represent you both in court to resolve any remaining issues.

### ■ CONSULTING ATTORNEY

The role of the consulting attorney, unlike a collaborative attorney, is to assist you on a limited basis. A consulting attorney does not take on full responsibility for overseeing or handling your case. The limits of the representation are set by agreement. Therefore, it is critical that you fully understand the extent of the services, which may include some or all of the following:

- Explaining your rights and responsibilities about specific issues
- Advising you on how to obtain information
- Helping you to develop a negotiation strategy
- Teaching you how to present an argument in court
- Filling out forms
- Writing letters or court documents
- Accompanying you to mediation
- Reviewing and/or “signing off” on mediated or negotiated agreements

### ■ COSTS

If you and your spouse choose to hire collaborative lawyers, you may each be required to pay a retainer. However, because you share a commitment to avoid going to court, your fees will most likely be less than the cost of full attorney representation. Consulting attorneys providing limited representation may also require payment of a retainer, but this is usually lower than that required for full representation. Some consulting attorneys will allow you to pay an hourly rate as you go, without payment of a retainer.



## FREQUENTLY ASKED QUESTIONS

### ■ HOW DO I START THE PROCESS OF OBTAINING A DIVORCE?

If you or your spouse have lived in California for six months, and at least three months in the county in which you plan to file, the first step is to fill out a **Summons** and a **Petition for Dissolution of Marriage**. After you have filed these papers at the filing window at the courthouse, you must have these forms personally “served” on your spouse by someone other than yourself who is over eighteen years of age. The person who files the **Petition** is called the **Petitioner** throughout the proceedings. The other spouse is always called the **Respondent**. The **Respondent** has thirty days to file a **Response**, unless the **Petitioner** agrees to extend the time. There is a fee to file a **Petition** and to file a **Response**. You can apply for a fee waiver if you cannot afford the filing fee.

### ■ HOW QUICKLY CAN I GET A DIVORCE?

A divorce takes at least six months and a day from the date your spouse is served with the **Petition for Dissolution**. A divorce can be finalized any time after that, but it is *not* automatic. Most people wait to become divorced until all issues of property, support, and custody are resolved. It is possible, however, to terminate your marriage before deciding these issues, by a process called **bifurcation**. Bifurcation is a legal means of postponing decisions on certain issues and still proceeding with a divorce. Before you decide to bifurcate, it is important to learn about the pros and cons of doing so from an attorney, the Internet, or other reliable sources (see *FAQ*, pg 11).

### ■ WHAT IS CONCILIATION COURT?

Before any hearing or trial involving child custody and/or visitation, both parents are required to meet with a trained counselor hired by the court. The counselor will try to help you agree upon a custody and parenting plan. These sessions are arranged through Conciliation Court and are held in private offices located in the courthouse. In some counties, the assigned mediation court counselor may submit a recommendation to the judge, even if you and your spouse have not reached your own agreement during the process. In some counties, these sessions are entirely confidential and the counselor can only report agreements reached by the parents. You should inquire about the rules in your county.

### ■ WHAT IS A FAMILY LAW FACILITATOR?

In a growing number of counties throughout California, the Office of the Family Law Facilitator has been established to assist parents with child support, spousal support, and health insurance issues. The staff consists of attorneys and paralegals who will meet with you and/or your spouse to attempt to resolve these issues. The staff at the Family Law Facilitator’s office does not give legal advice. No promise of confidentiality and no attorney/client relationship is made between you and the office.

### ■ WHAT RESOURCES ARE AVAILABLE ON THE INTERNET TO LEARN MORE ABOUT MEDIATION AND DIVORCE?

Some of the resources offered on the Internet are the following:

- [www.calbar.org/famlaw](http://www.calbar.org/famlaw)
- [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)
- [www.findlaw.com](http://www.findlaw.com)
- [www.lacb.org](http://www.lacb.org)

In addition, your county bar association may have a web site that includes information about issues and procedures in your particular county.

### ■ **IS THERE A SIMPLIFIED PROCESS FOR OBTAINING A DIVORCE?**

California has a process called **Summary Dissolution**, which is the simplest procedure for obtaining a divorce.

If you and your spouse qualify for a **Summary Dissolution**, the number of forms you are required to fill out and file with the court will be reduced, and you will not have to appear in court. To qualify for this procedure, you and your spouse must have a signed agreement covering the division of assets and debts and:

- Be married less than five years
- Have no children
- Have no interest in real property
- Have combined debts that do not exceed \$5,000
- Have combined assets of less than \$25,000, excluding cars, deferred compensation, and retirement plans

You can obtain information and help with this simplified procedure from the Family Law Facilitator of your local court or from some of the Internet sources listed in this brochure.

### ■ **HOW DO ATTORNEYS CHARGE FOR THEIR TIME?**

Attorneys generally charge in tenths-of-an-hour increments. This includes time spent with you and time spent working on your case, as well as phone calls, reading and writing correspondence, meetings, travel to and from court and meetings, research, preparing and filing documents, and waiting in court. With full representation or consultation, you will generally be required to pay a deposit, or retainer, in advance, against which

you will be charged hourly rates. An attorney providing limited representation may also require payment of a retainer, but this is usually lower than that required for full representation. Many consulting attorneys and mediators allow you to pay their hourly rate as you go, without payment of a retainer.

### ■ **WHAT QUESTIONS SHOULD I ASK WHEN INTERVIEWING A MEDIATOR?**

At present, there is no special certification for an individual specializing in family law mediation. As with any professional you hire for an essential service, it is wise to interview prospective mediators and ask about their background and experience. The following questions may help you assess the competence of a prospective mediator:

- Have you had any special training in mediation practice?
- How much actual mediation experience do you have?
- Are you familiar with family law?
- Do you understand financial issues?
- Are you aware of child development and psychological issues involved in divorce?

**The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.**

**The State Bar of California**  
**Office of Communications**  
180 Howard Street  
San Francisco, CA 94105-1639  
415-538-2000  
415-538-2280 (for pamphlets)  
[www.calbar.org](http://www.calbar.org)





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Office of Communications

180 Howard Street

San Francisco, CA 94105-1639

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